

BEFORE THE NATIONAL LABOR RELATIONS BOARD  
UNITED STATES OF AMERICA  
THIRTIETH REGION

Madison, Wisconsin

**WKOW TELEVISION, INC.**

**Employer**

**and**

**Case 30-UC-397**

**WISCONSIN BROADCAST ENGINEERS  
LOCAL 715, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL  
WORKERS, AFL-CIO, CLC**

**Petitioner**

**DECISION AND ORDER**

The Petitioner seeks to clarify the existing photographer unit at the Employer's Madison, Wisconsin facility.<sup>1</sup> If the requested clarification were granted the chief photographer and one-person band classifications would be included in the existing photographer unit.<sup>2</sup> The Petitioner asserts the petition is timely and should be granted because a substantial change has occurred since the parties entered into their last collective bargaining agreement; specifically a change in station ownership, and changes in the job duties of both employee classifications. The Employer opposes the clarification on the grounds that both classifications are historically excluded, contests that a substantial change has occurred, and further maintains that the chief photographer

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<sup>1</sup> Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

<sup>2</sup> In this decision the use of the terms photo journalist and photographer are synonymous.

is a supervisor, and that community of interest factors prevent the accretion of the one-person band positions.<sup>3</sup>

## FACTS

The Employer operates a commercial television station in Madison, Wisconsin, affiliated with ABC. Recently the Employer also entered into a contractual relationship to provide studio space and personnel to produce Fox news broadcasts. The Employer has also changed ownership since the last collective bargaining agreement was negotiated with the Petitioner.<sup>4</sup>

Both positions at issue in this proceeding, one-person band and chief photographer, are part of the Employer's news department. The news department is one of the eleven departments at the station, all of which ultimately report to the Station Manager Bob Miller. News Director Merit Ossian is responsible for the news department, which consists of approximately thirty employees, including photographers, reporters, anchors, one-person bands, producers, floor crew and other classifications.

The assignment editor, Jennifer Schwartz, assigns daily projects to reporters and photographers. Typically a reporter and photographer are assigned to work together on the

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<sup>3</sup> Timely briefs from the Employer and Petitioner have been received and duly considered. Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer operates a commercial television station in Madison, Wisconsin and is engaged in commerce within the meaning of the Act. It will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner is a labor organization within the meaning of the Act.
4. On May 15, 1995 the Petitioner was certified in the following unit:  
All photo journalists, but excluding all other employees and all guards and supervisors as defined in the Act.

That unit was subject to clarification in case 30-UC-342, and I specifically found the head photographer a supervisor. In the parties current collective bargaining agreement the Employer recognizes the Petitioner as the current collective bargaining representative of the following unit:

All photo journalists, but excluding all other employees and all guards and supervisors (including the chief photographer) as defined in the Act.

<sup>4</sup> The parties entered into an assumption agreement of the 2000-2002 agreement on May 15, 2001. Under Section 3.2 of that agreement the contract is continued in effect until certain notice requirements are met, and the 2000-2002 CBA remains in effect under this provision. There is no claim by the Employer that the Petition is untimely.

inherently collaborative process of completing a story for presentation on that evening's news. In the field the reporter makes the contacts and conducts the interview while the photographer tapes. Once they return to the station the reporter completes writing the story, voices the story and presents the story on-air, the photographer edits the story to prepare it for presentation.

### One-Person Bands

One-person bands working out of the Employer's Madison facility serve as reporters approximately 80 percent of the time, working in conjunction with a photographer. On occasion, approximately the remaining 20 percent of the time, they are assigned to cover a story independently. On these assignments the one-person band performs all the reporter and photographer functions without assistance. When acting in this independent role the one-person band's time is split approximately 50/50 between reporter and photographer tasks.

Photographers and the one-person band classification are the only positions with the Employer that use photographic equipment.

The Employer currently employs three one-person bands, Jared Christie, Marc Lovicott and Joe Mason. Christie and Lovicott work out of the Madison station, Mason is based in Janesville, Wisconsin and serves as the Employer's Rock County bureau. No reporter or other news department staff are assigned to Janesville, and Mason presumably predominantly works independently, in contrast to Christie and Lovicott.

One-person band positions have existed with the Employer since the Petitioner became the collective bargaining representative of the photographers in 1995. In 1998 the parties arbitrated a grievance regarding the assignment of photographers to perform one-person band duties. The Employer has recently added the third one-person band position as a result of

entering into the agreement to produce Fox news broadcasts. At least one one-person band has converted to a photographer, this occurred approximately three years ago.

### Chief Photographer

The primary job duties of a bargaining unit photographer are to shoot video and edit video of news and sporting events. Other regular duties include operating a microwave truck for live events and various other tasks involving maintenance of the camera equipment or station vehicles. A photographer will occasionally perform tasks traditionally considered reporter's work, such as proposing and developing story ideas or asking a question at a press conference. The Employer currently employs six bargaining unit photographers and one chief photographer.

The current Chief Photographer, Ryan Moore, has held this position since 1999. Prior to Moore Greg Schieve acted in this role. Moore was a photographer for the Employer before becoming the chief photographer, and he estimated that 90 percent of his daily work remains that of a photographer. Recently Moore has been assigned to spend one day a week at the station working exclusively on administrative responsibilities, including specifically evaluating the work of photographers.

When Schieve was chief photographer he was responsible for both the photographer's weekly and on-call schedule. Currently Moore is responsible for only the photographer's on-call schedule. Also, in the past photographers took vacation and other requests for time off to Schieve as an initial step, after approval they would then forward these requests to the News Director. Currently, these requests are made directly to the Assignment Editor. Both of these changes have occurred since the prior unit clarification petition involving this position.

Moore has made recommendations on hiring three times in the last eighteen months, and that each time the News Director has followed his recommendation. Moore described the hiring

process at the hearing. First, when he receives an application, he reviews the applicants' resume and if one is included accompanying video resume. From this initial review he establishes a pool of qualified applicants. When it becomes time for "serious consideration" of candidates Moore again reviews the tapes, and may conduct an independent phone or face-to-face interview, or consult with other members of the photography staff. Moore then ultimately makes a recommendation to Ossian regarding which applicant should ultimately be hired. Ossian has hired three photographers based on Moore's recommendation, and there is no evidence she conducted any independent review of the candidates.

In the one instance where Moore felt discipline was necessary and made a recommendation to discharge a photographer, that recommendation was followed. In addition to his role in hiring and firing Moore is a salaried employee; photographers in the bargaining unit are paid an hourly wage. Moore has a separate office in the newsroom; bargaining unit photographers share a workstation.

### **DETERMINATION**

The Employer's position is that both positions are historically excluded classifications from the unit and that this prevents their accretion, as the Petitioner cannot demonstrate a substantial change has occurred. The Employer further maintains that the chief photographer is a supervisor and that the one-person band position does not share a community of interest with the photographer unit. The Petitioner alleges that either the change in ownership or the addition of the Fox newscast qualify as substantial changes. The Petitioner contests the Employer's supervisory and community of interest assertions.

One of the intended purposes of a unit clarification petition is to resolve ambiguous situations that arise when an existing, excluded job classification undergoes recent, substantial

changes in the duties and responsibilities of the classification, so that a real doubt is created as to whether the classification should remain excluded. *Bethlehem Steel Corp.*, 329 NLRB 243, 244 (1999), citing *Union Electric Co.*, 217 NLRB 666, 667 (1975); *Robert Wood Johnson University Hospital*, 328 NLRB 912 (1999). Clarification is not appropriate, however, for upsetting an established practice of the parties concerning unit placement, even if that practice has become established by acquiescence and not express consent. *Union Electric Co.*, *supra*.

Based on the entire record I find that both the one-person band and chief photographer positions are both historically excluded from the photographer bargaining unit. Both were in existence at the time of the 1995 certification, and the exclusion of both classifications has been discussed during contract negotiations. In addition the chief photographer was the subject of a previous UC petition, the result of which was to confirm the chief photographer's exclusion. The petition is only appropriate if the petitioner can demonstrate that a substantial change has occurred in the job duties of the one-person band and chief photographer to overcome the historical exclusion.

#### One-Person Bands

I find that a substantial change of the type necessary to disregard the historical exclusion has not occurred in the one-person band classification. The Petitioner asserts that the addition of a Fox newscast and a change in ownership have substantially changed the job duties of the one-person band classification. The only evidence of a change in the position created by either of these events is the an addition of another one-person band to work on the Fox broadcast. Although not insignificant as an increase I do not find the increase alone from two to three employees to be the type of change that creates real doubt as to whether the employees in the classification continue to come within the exclusion. For this reason it would be inappropriate to

disturb the historical composition of the photographer unit placing the three one-person band employees in that unit. Because of this finding it is unnecessary to address the community of interest arguments raised by both parties.

#### Chief Photographer

Petitioner asserts a substantial change has occurred in the chief photographer position, specifically that supervisory responsibilities have been removed. The Employer, contrary to the Petitioner, contends that the administrative duties of the position have increased over the last three to six months. Based on the entire record, however, I do not find that significant supervisory responsibilities have been removed from the chief photographer and that the position remains essentially unchanged. For this reason I find it would also be inappropriate to place the chief photographer position in the photographer unit, both on historical exclusion and supervisory grounds.

Under Section 2(11) of the Act if the chief photographer position retains any supervisory indicia the classification is properly excluded from the bargaining unit. In the previous clarification determination the factors relied upon in finding the chief photographer position was supervisory in nature included: the authority to effectively recommend the hiring of employees, significantly higher pay, existence of a separate office, spending 15 to 20 percent of time doing non-unit work, budget responsibilities, scheduling responsibilities and attendance of management/supervisory meetings. Unless the Petitioner could demonstrate that none of these responsibilities remained, or that each was performed in a routine or clerical manner instead of requiring the exercise of independent judgment, the classification must remain excluded.

The evidence indicates that Moore has made hiring recommendations that were followed three times, and a disciplinary recommendation of discharge that was also followed. The

Petitioner notes in brief that authority to effectively recommend “generally means that the recommended action is taken with no independent investigation by superiors, not simply that the recommendation is ultimately followed.” *ITT Lighting Fixtures*, 265 NLRB 1480 (1982). This is what the evidence reveals regarding Moore’s hiring recommendations, and this determination alone is sufficient to base the finding of the continuing supervisory nature of the position.

**ORDER<sup>5</sup>**

It is hereby ordered that the petition for unit clarification in Case 30-UC-397 is dismissed.<sup>6</sup>

Signed at Milwaukee, Wisconsin on this 21<sup>st</sup> day of April 2003.

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<sup>5</sup> The Decision and Order Denying Unit Clarification herein does not constitute a recertification of the Union.

<sup>6</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 5, 2003.